
Chapter 1 – INTRODUCTION

1.1.0 THE WISCONSIN CAREGIVER PROGRAM MANUAL

The Wisconsin Caregiver Program Manual provides detailed information about the Caregiver Law as it relates to Bureau of Quality Assurance (BQA) regulated entities.

While the Wisconsin Caregiver Law applies to all entities regulated by the Department of Health and Family Services (DHFS), this manual focuses on entities regulated by BQA and is designed to provide clear policy and procedure direction for these entities. It is intended to assist entity owners, employees and nonclient residents in understanding their roles and responsibilities under the Wisconsin Caregiver Law.

If you need further assistance, please contact the Office of Caregiver Quality (OCQ) of BQA by phone at (608) 243-2019 or by email at **caregiver_intake@dhfs.state.wi.us**.

1.2.0 PURPOSE OF THE WISCONSIN CAREGIVER LAW

s.50.065
HFS 12
s.146.40
HFS 13

The Department of Health and Family Services implemented the Caregiver Law on October 1, 1998, under the authority of Act 27 (1997-1999 biennial budget). The 1999 – 2001 Budget Bill, enacted as 1999 Wisconsin Act 9, became effective October 29, 1999. Act 9 amended the original Caregiver Law and is available at the Internet legislative web site www.legis.state.wi.us/billtrack.html.

The Wisconsin Caregiver Program responds to the potential for physical, emotional and financial abuse of vulnerable citizens by persons who have been convicted of serious crimes or have a history of improper behavior. The Caregiver Law is intended to protect clients in health care settings from abuse, neglect or misappropriation of property by requiring employers and licensing agencies to:

- conduct caregiver background checks;
- closely examine the results of the caregiver background checks for criminal arrests and convictions or findings of misconduct by a governmental agency; and,
- make employment and licensing decisions based on the results of the background checks in accordance with the requirements and prohibitions in the law.

Therefore, the Caregiver Law requires two types of caregiver background checks:

1. Those completed by entities on their employees and contractors, and
2. Those completed by the Bureau of Quality Assurance (BQA) on license holders/legal representatives and nonclient residents of BQA regulated entities.

Chapter 1 – INTRODUCTION

Caregivers with convictions of serious crimes or a history of improper behavior may be permanently barred from working in regulated facilities, unless clear and convincing evidence of rehabilitation has been provided to the Department, through the Rehabilitation Review process.

Entities that fail to comply with the provisions of the program may be subject to program sanctions, such as a required corrective action plan, mandatory training, or the denial, revocation or suspension of the license, certification or registration by the Department.

The Caregiver Law also requires all regulated entities to report allegations of abuse, neglect or misappropriation of client property to BQA, as well as requiring employers to complete background checks for all caregivers employed by entities regulated by the Department.

The Caregiver Program is implemented under ss.50.065 and ss.146.40, Wis. Stats. and Chapters HFS 12 and 13 of the Wisconsin Administrative Code, which can be found at <http://dhfs.wisconsin.gov/caregiver/StatutesINDEX.HTM>.

1.3.0**COMPONENTS OF THE WISCONSIN CAREGIVER PROGRAM**

The components of the Wisconsin Caregiver Program include:

- Caregiver background checks
- Employment and licensing limitations
- Rehabilitation reviews
- Investigating and reporting caregiver misconduct
- The Caregiver Misconduct Registry

1.4.0**EMPLOYMENT AND LICENSING PROHIBITIONS****s.50.065(4m)**

The Caregiver Law imposes the following employment and licensing prohibitions on persons who have been convicted of certain crimes and offenses or have governmental findings of misconduct:

- The Department of Health and Family Services (DHFS) may not license, certify or register an entity for that person;
- A county agency may not certify a day care or license a foster home or treatment foster home for that person;
- A child placing agency may not license a foster home or treatment foster home or contract with an adoptive parent applicant for a child adoption;
- A school board may not contract with a licensed day care provider;
- An entity may not employ, contract with or permit that person to reside at the entity.

Chapter 1 – INTRODUCTION

1.5.0**PROGRAMS COVERED BY THE LAW****HFS 12.02(1)(b)**

An entity is any facility, agency, organization or service that is licensed, approved, certified by, or registered with the Department of Health and Family Services (DHFS).

The programs subject to the Caregiver Law are those regulated under Chapters 48, 50, 51, and 146, Wis. Stats. Since this manual focuses on entities regulated by BQA, Chapter 48 programs (day care providers, foster homes, etc.) are not included here.

1.5.1**Programs Covered Under Chapters 50, 51, and 146, Wis. Stats.**

- Emergency Mental Health Services Programs – HFS 34
- Mental Health Day Treatment Services for Children – HFS 40
- Outpatient Community Mental Health/Developmental Disabilities – HFS 61
- Community Substance Abuse Services (CSAS) – HFS 75
- Community Support Programs (CSPs) – HFS 63
- Community Based Residential Facilities (CBRFs) – HFS 83
- Adult Family Homes (3 and 4 bed AFHs) – HFS 88
- Residential Care Apartment Complexes (RCACs) – HFS 89
- Hospitals, including Clinics that are part of the hospital – HFS 124
- Rural Medical Centers – HFS 127
- Hospices – HFS 131
- Nursing Homes – HFS 132
- Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) – HFS 134
- Home Health Agencies (including personal care and supportive home care services provided by a licensed HHA) – HFS 133

1.5.2**Entities Not Currently Covered Under the Law**

Some entities are not covered under the Caregiver Law; however, they may have a policy of conducting criminal record checks or caregiver background checks. These entities may include:

s.50.065(1)(ag)2

- Emergency Medical Services (Ambulances, Paramedics, EMTs)
- County certified Adult Family Homes (1 and 2 bed AFHs)
- Adult Day Services
- Sheltered Workshops (rehabilitation facilities providing daytime vocational services for adults with developmental disabilities)
- Personal Care and Supportive Home Care workers or agencies that are not state-licensed Home Health Agencies
- Rural Health Clinics

Chapter 1 – INTRODUCTION

- Medical Clinics that are not part of a hospital (unless the medical clinic is using a hospital provider number for billing purposes)
- County agencies not otherwise regulated by the Department

1.6.0 REQUIRED INDIVIDUALS

Both entities and BQA have a responsibility to complete the caregiver background check process on individuals defined as caregivers.

1.6.1 Entity Responsibility**s.50.065(2)(b)**

An entity is required to complete caregiver background checks on caregivers 18 years old and over who are:

- Employees of the entity; or
- Contractors with the entity.

(See [Chapter 2](#))

Caregivers under age 18 may not be subject to the full caregiver background check requirement. See 2.1.3 for students and 3.1.3 for nonclient residents.

1.6.2 Bureau of Quality Assurance Responsibility**s.50.065(2)(am)**

The Bureau of Quality Assurance (BQA) is required to complete caregiver background checks on:

- Individuals who apply for or have regulatory approval to operate an entity regulated by BQA;
- Principal officers, corporate or board members or managers of the business or organization who have regular, direct contact with clients; and
- Nonclient residents of regulated entities.

(See [Chapter 3](#))

Chapter 1 – INTRODUCTION

1.7.0 DEFINITIONS

The following definitions apply to the Wisconsin Caregiver Program.

1.7.1 Caregiver**s.50.065(1)(ag)1.a**

A caregiver is a person who is all of the following:

- employed by or under contract with an entity;
- has regular, direct contact with the entity's clients or the personal property of the clients; and
- is under the entity's control.

s.50.065(1)(ag)1.b

A caregiver is also a person who is one of the following:

- The owner or administrator of an entity, whether or not they have regular, direct contact with clients; or
- A board member or corporate officer who has regular, direct contact with the clients served.

1.7.2 Nonclient Resident**s.50.065(1)(cn)**

A nonclient resident is a person 10 years of age or older who is not a client of the entity but who resides at the entity and is expected to have regular, direct contact with entity clients (e.g. owner's family member).

1.7.3 Regular, Direct Contact**HFS 12.03(16)
s.50.065(1)(br)**

"Regular" means contact that is planned, scheduled, expected or periodic.

"Direct contact" when used in reference to a person's contact with clients, means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or misappropriation of a client's property.

1.7.4 Under the Entity's Control**HFS 12.03(25)(a)
& (b)1-6**

"Under the entity's control" means a person employed by or under contract with the entity for whom the entity does both of the following:

(a) Determines whether a person employed by or under contract with the entity who has access to clients may provide care, treatment or other similar support service functions to clients served by the entity.

(b) Directs or oversees one or more of the following:

Chapter 1 – INTRODUCTION

1. The policy or procedures the person must follow in performing his or her duties as a caregiver.
2. The conditions under which the person performs his or her duties.
3. The tasks performed by the person.
4. The person's work schedule.
5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.
6. The compensation the person receives for performing his or her duties as a caregiver.